

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TATIANA WESTBROOK, an individual;  
JAMES WESTBROOK, an individual; HALO  
BEAUTY PARTNERS, LLC, a Nevada Limited  
Liability Company,

NO. 2:20-cv-01606-BJR

1

## Plaintiffs.

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTION FOR STATUS  
CONFERENCE**

KATIE JOY PAULSON, an individual;  
WITHOUT A CRYSTAL BALL, LLC, a  
Minnesota Limited Liability Company; and  
DOES 1 through 100, inclusive,

## Defendants.

## I. INTRODUCTION

While Defendants’ Motion for Status Conference (“Motion”) fails to comply with this Court’s Standing Order for All Civil Cases,<sup>1</sup> Plaintiffs do not dispute that a status conference with the Court is necessary. However, if this Court considers Defendants’ informal request to “place constraints on counsel’s public behavior,” Plaintiffs respectfully request an opportunity to submit additional briefing as Defendants have failed to establish that an order forbidding

<sup>1</sup> Defendants failed to make a meaningful effort to confer prior to filing the Motion as described in more detail below.

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTION FOR STATUS  
CONFERENCE - 1  
(2:20-cv-01606-BJR)**

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1 Plaintiffs' counsel's speech is warranted.<sup>2</sup> Additionally, if a "gag order" is issued, it must be  
 2 against all participants in this case, including Defendants.

3 Plaintiffs also seek to address Defendants' misrepresentations in their Motion. At no  
 4 point has Plaintiffs' counsel, Michael Saltz, publicly accused Ms. Paulson of hacking into his  
 5 Twitter and Gmail accounts. Notably, Defendants have not submitted any evidence of such  
 6 public accusations because none exist.

7 Finally, Plaintiffs agree that Court intervention is appropriate at this time but disagree  
 8 that it is due to the actions of Plaintiffs' counsel. Defendants, not Plaintiffs' counsel, are  
 9 attempting to litigate their case on social media.<sup>3</sup> Since the filing of this case on October 30,  
 10 2020, Defendants have published or made dozens of unprovoked prejudicial public statements  
 11 regarding this case on various social media platforms, including, but not limited to, YouTube,  
 12 Twitter, Facebook, and Instagram. Plaintiffs' counsel has used social media to investigate this  
 13 case, seek out witnesses and evidence, and, on occasion, refute Defendants' prejudicial public  
 14 statements.

## 15 II. CLARIFICATION OF FACTS

16 Since Plaintiffs' lawsuit was filed less than three months ago, Defendants have made  
 17 dozens of public statements regarding this case on Twitter, Facebook, Instagram, and YouTube.  
 18 Below is a non-exhaustive list of dates on which Defendants addressed this case on social  
 19 media:<sup>4</sup>

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 21  
 22 <sup>2</sup> The Court may enter a limited "gag order" against trial participants when (1) the activity restrained poses a  
 23 substantial likelihood of material prejudice; (2) the order is narrowly drawn; and (3) less restrictive alternatives are  
 24 not available. *United States v. Wunsch*, 84 F.3d 1110, 1117 (9th Cir. 1996); see also *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1075 (1991) (part II of majority opinion; Rehnquist, C.J.) (in order to  
 25 satisfy the First Amendment, there must be facts showing a "substantial likelihood of material prejudice" to an  
 26 adjudicative proceeding); *Levine v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 764 F.2d 590, 595 (1985).

<sup>3</sup> Notably, Plaintiffs have not made a single public statement about this case to date. Declaration of Elana R. Levine  
 ("Levine Decl.") ¶ 3.

<sup>4</sup> Levine Decl., ¶¶ 3–5, Exs. 1–2.

- 1     • October 31 – Twitter and two YouTube videos entitled, “It’s True About the
- 2         Westbrooks & I will be Ok” and “This Channel Will Keep Going”
- 3     • November 1 – Twitter
- 4     • November 6 – Twitter
- 5     • November 8 – Twitter
- 6     • November 9 – YouTube “My story, My statement, & My mistakes”
- 7     • November 11 – Twitter
- 8     • November 25 – YouTube “Update on the Lawsuit/Responding to Criticism/How to
- 9         Give Back”
- 10    • November 29 – YouTube “Am I Ok?”
- 11    • December 9 – “No One Deserves Anything”
- 12    • December 27 – “Venting Out Our Frustrations”
- 13    • December 29 – “All Of This NEEDS To STOP”
- 14    • January 7 – Twitter and YouTube “The Worst Day Ever”
- 15    • January 8 – Twitter
- 16    • January 15 – YouTube “‘He’s Evil’ Trisha Paytas Is Terrified of Jeffree Star Over
- 17         This...”
- 18    • January 16 – YouTube “This is Really Bad – She’s Done”
- 19    • January 18 – Twitter

20           As this case involves defamatory statements asserted on social media, Plaintiffs’ counsel,  
 21 Michael Saltz, has used his personal Twitter account to seek out witnesses and information  
 22 relating to Plaintiffs’ claims and to refute Defendants’ numerous unprovoked prejudicial public  
 23 statements about this litigation.<sup>5</sup>

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25    <sup>5</sup> Declaration of Michael Saltz (“Saltz Decl.”) ¶¶ 2–5.

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In mid-January 2021, Mr. Saltz and several of Plaintiffs' witnesses were subjected to widespread hacking of their personal social media and email accounts, as well as vicious online harassment, including doxing.<sup>6</sup> On the morning of January 18, 2021, a federal holiday, Mr. Saltz alerted Mr. Brown to the urgent hacking issue and requested a telephone call to discuss the matter.<sup>7</sup> The two exchanged several emails but no telephone conference occurred, nor did Mr. Brown request one prior to filing Defendants' Motion.

### III. ARGUMENT

**A. Defendants failed to make a meaningful effort to confer with Plaintiffs' counsel prior to filing the Motion.**

This Court’s Standing Order for All Civil Cases (“Standing Order”) requires that the parties “make a meaningful effort to confer prior to filing a motion.”<sup>8</sup> Further, the parties “should provide for at least three (3) business days between attempts to confer and a motion’s filing and shall explain their specific efforts to comply if contact was not successfully made. Motions that do not comply may be summarily denied.”<sup>9</sup>

In one of Mr. Brown's emails on January 18, 2021, he stated, "I am skeptical about your allegations, but they should be aired in front of the judge. I also have concerns that I want addressed. I don't think we can get her attention on a holiday, but perhaps we should send an email or something today."<sup>10</sup> No attempt was made by Mr. Brown to substantively discuss the matter.<sup>11</sup> Defendants' Motion was filed with the Court at 5:53 p.m. that same day.<sup>12</sup>

<sup>6</sup> Saltz Decl. ¶¶ 11–21; *see also* Declaration of Natalie Kennett.

<sup>7</sup> Saltz Decl. ¶ 25.

<sup>8</sup> Standing Order for All Civil Cases, Section C, Dkt. 20.

9 *Id.*

<sup>10</sup> Declaration of Michael Brown (“Brown Decl.”). Ex. D. Dkt. 41.

<sup>11</sup> Saltz Decl. ¶¶ 23–25. Notably, Mr. Brown ignored Mr. Saltz’s earlier request for a telephone conference to discuss these issues. *Id.*

<sup>12</sup> Saltz Decl. ¶ 25, Ex. 2.

1       **B. Any “constraints” on Plaintiffs’ counsel’s use of social media are unwarranted.<sup>13</sup>**

2           Defendants fail to establish how Mr. Saltz’s limited statements to his relatively small  
 3 group of followers on Twitter have somehow created a “massive social media circus surrounding  
 4 this lawsuit.”<sup>14</sup> Defendants acknowledge that Plaintiff Tati Westbrook is a “prominent social  
 5 media personality.”<sup>15</sup> Additionally, Ms. Paulson has over two thousand more Twitter followers  
 6 than Mr. Saltz, and has a YouTube channel with more than 135,000 subscribers.<sup>16</sup> Ms. Paulson  
 7 has continued to address this case to her followers on both Twitter and YouTube, among other  
 8 social media venues, since Plaintiffs’ Complaint was filed.<sup>17</sup> Moreover, the filings in this case  
 9 are publicly available and closely followed by the Parties’ thousands of supporters and  
 10 detractors.

11           Additionally, Defendants have failed to identify any statute, rule, or case law that  
 12 prohibits counsel from seeking witnesses and information relating to Plaintiffs’ defamation case  
 13 on social media. In fact, the Washington Rules of Professional Conduct expressly permit counsel  
 14 to publicly discuss a case if the statements will not have a “substantial likelihood of materially  
 15 prejudicing an adjudicative proceeding in the matter.”<sup>18</sup> Specifically, counsel may state, *inter*  
 16 *alia*, “a request for assistance in obtaining evidence and information necessary thereto”<sup>19</sup> and “a  
 17 warning of danger concerning the behavior of a person involved, when there is reason to believe  
 18 that there exists the likelihood of substantial harm to an individual or to the public interest[.]”<sup>20</sup>  
 19 Further, counsel “may make a statement that a reasonable lawyer would believe is required to  
 20 protect a client from the substantial undue prejudicial effect of recent publicity not initiated by

21       <sup>13</sup>Curiously, Defendants’ request for this Court’s assistance to restrain Plaintiffs’ counsel from “litigating  
 22 [Plaintiffs’] case largely on social media,” directly contradicts Defendants’ position that this Court has no  
 jurisdiction over this matter, as set forth in their pending Motion to Dismiss.

23       <sup>14</sup> See Defendants’ Mot. for Status Conference, at 3, Dkt. 39.

24       <sup>15</sup> *Id.* at 2.

25       <sup>16</sup> Saltz Decl. ¶ 6.

26       <sup>17</sup> Levine Decl. ¶¶ 4–5, Exs. 1–2.

21       <sup>18</sup> RPC 3.6(a).

22       <sup>19</sup> RPC 3.6(b)(5).

23       <sup>20</sup> RPC 3.6(b)(6).

1 the lawyer or the lawyer's client.”<sup>21</sup> Mr. Saltz’s inquiries and statements on Twitter related to  
 2 this case are limited to seeking witnesses and information; warning of danger about the  
 3 widespread hacking and harassment of witnesses, counsel, and parties to this case; and clarifying  
 4 Defendants’ misrepresentations and/or statements made on social media after the Complaint was  
 5 filed.<sup>22</sup> None of Mr. Saltz’s limited public statements have a substantial likelihood of materially  
 6 prejudicing this matter.<sup>23</sup> If anything, Mr. Saltz has been trying to clarify Defendants’  
 7 unprovoked prejudicial statements against Plaintiffs.<sup>24</sup>

8       Moreover, Plaintiffs’ counsel never publicly accused Defendants of hacking or threatened  
 9 Defendants or Defendants’ counsel with criminal prosecution. Plaintiffs’ counsel actually  
 10 informed Mr. Brown that widespread hacking of his personal social media and email accounts, as  
 11 well vicious online harassment of witnesses and hacking of witnesses’ social media and email  
 12 accounts, was occurring and that a forensic expert had been engaged to track down the hackers  
 13 who were making serious criminal threats.<sup>25</sup>

14       Finally, while Defendants have not formally requested a restraining order prohibiting  
 15 Plaintiffs’ counsel from exercising his First Amendment right, if this Court considers a prior  
 16 restraint against Plaintiffs’ counsel, Plaintiffs respectfully request a full briefing  
 17 schedule. Additionally, if a prior restraint is ordered, it must also be applied against Defendants  
 18 and Defendants’ counsel.

19 **C. Plaintiffs move to strike Mr. Brown’s Declaration.**

20       Pursuant to LCR 7(g), Plaintiffs move to strike Mr. Brown’s Declaration in support of  
 21 Defendants’ Motion as Mr. Brown’s statements about the referenced screenshots and emails are  
 22 misleading and/or irrelevant.<sup>26</sup> For example, Mr. Brown’s statement in Paragraph 4 states,

23 <sup>21</sup> RPC 3.6(c).

24 <sup>22</sup> Saltz Decl. ¶¶ 2–5.

25 <sup>23</sup> Saltz Decl. ¶ 5.

26 <sup>24</sup> Saltz Decl. ¶ 3.

27 <sup>25</sup> Saltz Decl. ¶¶ 23–24. *See also* Brown Decl., Exs. A–C, Dkt. 41.

28 <sup>26</sup> Brown Decl., Dkt. 41.

1 “Below is a screenshot from a video on a YouTube channel that Mr. Saltz has promoted on his  
 2 Twitter account.”<sup>27</sup> However, the referenced screenshot fails to show that Mr. Saltz is  
 3 “promoting” a YouTube channel.<sup>28</sup> The screenshot is not even from Mr. Saltz’s Twitter page;  
 4 instead, it is simply a screenshot of the YouTube channel at issue.<sup>29</sup> Notably, the referenced  
 5 screenshot captures the YouTube channel discussing Defendants’ Motion to Dismiss, which was  
 6 filed and made publicly available on December 2, 2020.<sup>30</sup>

7       In Paragraph 5, Mr. Brown states, “Below are screenshots of just a few of the tweets Mr.  
 8 Saltz has posted to publicly accuse Ms. Paulson of the crime of hacking.”<sup>31</sup> However, the  
 9 referenced screenshot does not show that Mr. Saltz “publicly accused” anyone in particular of  
 10 hacking.<sup>32</sup> Instead, the screenshot shows that Mr. Saltz recognized a familiar email address used  
 11 in the hacking attempt.<sup>33</sup> Similarly, the next screenshot does not mention any names, nor does it  
 12 contain any alleged accusation against Ms. Paulson.<sup>34</sup> The following three screenshots, on pages  
 13 7 and 8 of Mr. Brown’s Declaration also fail to mention any names or contain any accusations of  
 14 hacking against Ms. Paulson.<sup>35</sup>

15       In Paragraph 6, Mr. Brown states, “Attached as Exhibit A-C are true and correct copies of  
 16 the emails Mr. Saltz sent me this morning accusing Ms. Paulson of federal crimes and  
 17 demanding that I explain my ‘involvement.’”<sup>36</sup> First, Mr. Brown failed to provide the entire  
 18 email chain between counsel to the Court.<sup>37</sup> Second, there is no evidence in the email chain of  
 19 Mr. Saltz accusing Ms. Paulson of “federal crimes.”<sup>38</sup> Instead, Mr. Saltz alerted Mr. Brown that

20       <sup>27</sup> Brown Decl., ¶ 4, Dkt. 41; Levine Decl. ¶ 13.

21       <sup>28</sup> See Brown Decl. ¶ 4, Dkt. 41; Levine Decl. ¶ 13.

22       <sup>29</sup> *Id.*

23       <sup>30</sup> Mot. to Dismiss, Dkt. 17.

24       <sup>31</sup> See Brown Decl. ¶ 5, Dkt. 41.

25       <sup>32</sup> *Id.*; Levine Decl. ¶ 13.

26       <sup>33</sup> *Id.*

27       <sup>34</sup> *Id.*

28       <sup>35</sup> *Id.*

29       <sup>36</sup> Brown Decl. ¶ 6, Exs. A–C, Dkt. 41.

30       <sup>37</sup> See Saltz Decl. ¶ 24, Ex. 1.

31       <sup>38</sup> *Id.*

1 one of the hackers stated on Twitter that he/she was hired by Defendants to hack into Mr. Saltz's  
2 email.<sup>39</sup> Mr. Saltz also requested that Mr. Brown take all steps to preserve any and all evidence  
3 so that a full forensic investigation could be completed.<sup>40</sup>

4 **IV. CONCLUSION**

5 Plaintiffs agree that court intervention is appropriate at this time but disagree that it is due  
6 to the actions of Plaintiffs' counsel.

7  
8 Dated: January 27, 2021

9  
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25 <sup>39</sup> *Id.*

26 <sup>40</sup> *Id.*

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